

Regular Second Appeal No.3959 of 2003.

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In the High Court of Punjab and Haryana at Chandigarh.

Regular Second Appeal No.3959 of 2003.

Date of decision:11.12.2006.

Om Parkash and another.

...Appellants.

Versus

Smt. Jello and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

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Present; Mr.Roopak Bansal Advocate for the appellants.

Mr.Rakesh Lathwal Advocate for the respondents.

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Judgment.

S. N. Aggarwal, J.

Patey Ram (now deceased) was the owner of agricultural land measuring 92 Kanals 18 Marlas. The appellants are the sons of said Patey Ram while respondent No.1 (i) is his widow. Respondent Nos. 1(ii) and 1(iii) are his daughters and respondent Nos.2 and 3 are also the sons of said Patey Ram.

The appellants filed civil suit against their father Patey Ram and brothers, respondent Nos.2 and 3 pleading that the suit land was

ancestral in the hands of Patey Ram in which they have got 1/7th share each. However, partition has not taken place. Said Patey Ram had suffered a collusive decree in favour of respondent Nos.2 and 3 for 1/7th share owned by him. The said decree was null and void and was not binding on the rights of the appellants. They being coparceners were entitled to have share in that land. The appellants have ½ share each in the said 1/7th share owned by their father Patey Ram.

Patey Ram died during the pendency of the civil suit. The respondents admitted that Patey Ram was the owner of land measuring 92 Kanals 18 Marlas but it was denied if the said land was Joint Hindu Family Property. It was also pleaded that partition had taken about 20 years ago and the appellants were given their share at the time of partition. The appellants had no share in the land which was exclusively owned by their father Patey Ram. Therefore, Patey Ram had the right to transfer the said land and he had transferred the same in favour of respondent Nos.2 and 3 by decree dated 11.9.1996. Decree dated 11.9.1996 was legal and valid document. Hence, dismissal of suit was prayed.

Issues were framed.

The parties led the evidence.

The learned trial Court dismissed the suit vide judgment and decree dated 13.2.2002.

The appellants filed an appeal which was also dismissed by

the learned Lower Appellate Court vide judgment and decree 21.3.2003.

Hence, the present appeal.

Admittedly, Patey Ram was the owner of land measuring 92 Kanals 18 Marlas. The appellants are sons from his first wife. The appellants had one sister. Patey Ram had re-married Jello and had two sons and one daughter from the second marriage. Accordingly, he divided the land in seven shares and gave $1/7^{\text{th}}$ share each to the appellants and $1/7^{\text{th}}$ share to their sister. Similarly, $1/7^{\text{th}}$ each share was given to the three children from the second wife namely Jello. $1/7^{\text{th}}$ share was kept by Patey Ram for himself. Thereafter, Patey Ram suffered decree dated 11.9.1996 for his $1/7^{\text{th}}$ share in favour of his two sons i.e. respondent Nos.2 and 3 from the second wife Jello which has been challenged by the appellants.

Admittedly, partition had taken place in which the appellants were given $1/7^{\text{th}}$ share each and $1/7^{\text{th}}$ share was kept by Patey Ram for himself. Therefore, Patey Ram had become exclusive owner of that land and he transferred the same in favour of his sons namely Bir Sain and Ramesh, respondent Nos.2 and 3. Obviously, $1/7^{\text{th}}$ share of Patey Ram was his own property in which the appellants had no right, title or interest.

Both the Courts below have held that the appellants have no right, title or interest in the suit property. The said findings are up-

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held.

No substantial of law question arises in this case.

There is no merit in this appeal and the same is dismissed.

December 11,2006.
Jaggi

(S. N. Aggarwal)
Judge